AZIM TAN SRI ABDUL AZIZ A

v.

AZIAH TAN SRI ABDUL AZIZ

HIGH COURT MALAYA, KUALA LUMPUR B
NOOR AZIAN SHAARI J
[CIVIL SUIT NO: S2-22-779-2001]
6 OCTOBER 2009

SUCCESSION: *Distribution of estate - Islamic law - Jurisdiction - Claim to property - Trust - Inter vivos gift - Whether proper forum for dispute was Syariah Court instead of civil court* C

SUCCESSION: *Administration - Action for recovery of property - Jurisdiction - Claim to property - Trust - Inter vivos gift - Whether proper forum for dispute was Syariah Court instead of civil court* D

ISLAMIC LAW: *Succession - Administration of estate of a Muslim - Jurisdiction - Claim to property - Trust - Inter vivos gift - Whether proper forum for dispute was Syariah Court instead of civil court* E

ISLAMIC LAW: *Jurisdiction - Syariah Court - Administration of estate of a Muslim - Claim to property - Trust - Inter vivos gift - Whether proper forum for dispute was Syariah Court instead of civil court*

CIVIL PROCEDURE: *Jurisdiction - Syariah Court - Administration of estate of a Muslim - Claim to property - Trust - Inter vivos gift - Whether proper forum for dispute was Syariah Court instead of civil court* F

The plaintiff and defendant, who were brother and sister, were two of the beneficiaries of the deceased's estate. The plaintiff was the administrator of the estate by virtue of a grant of Letters of Administration dated 14 May 1996. At the time of the deceased's death, the two properties were held in the defendant's name. In this action by the plaintiff against the defendant, the question requiring determination was whether the defendant held the land as the legal and beneficial owner of the properties, being a gift *inter vivos*/"hibah", or just as trustee for the deceased and, subsequently, the deceased's estate. Before commencement of the trial, the defendant raised a preliminary objection on the issue of jurisdiction, submitting that this case had to be filed in the Syariah Court because the civil court had no jurisdiction to determine the issue. G H I

Held (striking out the case with liberty to file afresh):

(1) The plaintiff's arguments, which appeared, on the facts, to emphasise upon the Letters of Administration, list of beneficiaries and so on, did not really matter. The issue was that the defendant denied the trust and claimed a gift *inter vivos*/"hibah", and the plaintiff was asking for the said properties to be given or handed over to the deceased's estate. On this issue, there was no doubt that the proper forum for this dispute would be the Syariah Court applying Islamic law. *Latifah Mat Zin v. Rosmawati Sharibun & Anor* (foll). (paras 13, 14 & 15)

Case(s) referred to:

Latifah Mat Zin v. Rosmawati Sharibun & Anor [2007] 5 CLJ 253 FC ***(foll)***

For the plaintif - Rosnita Noor; M/s R Noor & Co
For the defendant - Azhar Arman Ali; M/s Arman Yunos

Reported by Suresh Nathan

JUDGMENT

Noor Azian Shaari J:

[1] The plaintiff ("P"), Azim bin Tan Sri Abdul Aziz is suing the defendant ("D"), Aziah binti Tan Sri Abdul Aziz for the following reliefs:

(a) a declaration that the D is holding the properties known as 64, Jalan Setiabakti 9, Bukit Damansara, 50490 Kuala Lumpur and 34, Jalan SS 3/88, 47300 Petaling Jaya, Selangor as trustee for Tan Sri Abdul Aziz bin Zakaria (Deceased) hereinafter referred to as "the Deceased";

(b) the D is to release and hand over the titles to the said properties to the Deceased's estate within 30 days of the Court order and in the event the D fails to comply with such order, an order that Pejabat Tanah register the transfer; and

(c) cost.

[2] The brief facts of the case is that the P and the D are brother and sister and are two of the beneficiaries of the deceased's estate. The P is the administrator of the estate by virtue of a grant of Letters of Administrator dated 14 May 1996. The deceased died on 28 June 1993.

[3] At the time of the deceased's death, the two pieces of properties were held in the D's name. The D had in a hand written letter dated 15 February 1992 stated as follows:

SURAT PERSETUJUAN

Saya Aziah binti Tan Sri Abdul Aziz bersetuju dan mengaku bahawa harta-harta yang tersebut di bawah ini sebenarnya adalah harta-harta ayah saya Tan Sri Datuk Abdul Aziz bin Zakaria dan namanya sahaja atas nama saya:

(1) Rumah dimaksudkan rumah di N3 di Damansara Heights Kuala Lumpur.

(2) Rumah dimaksudkan rumah tempat di Petaling Jaya.

(3) Wang-wang dalam akaun saya di BSN dan ASN.

Apabila ayah saya Tan Sri Abdul Aziz bin Zakaria dan emak saya Puan Sri Pon binti Abdullah telah meninggal dunia nanti harta-harta itu akan menjadi harta pusaka

dan harta-harta itu akan menjadi harta-harta akan difaraid di antara saudara-saudara saya dan saya sendiri.

Kechuali ayah saya hendak memberinya kepada saya mana-mana satu atau kesemuaya sekali.

Saya menurunkan tandatangan di sini pada 15 Februari 1992 sebagai persetujuan saya.

Aziah Abdul Aziz
(Tandatangan)
Aziah binti Tan Sri Abdul Aziz

Saksi:

(Tanda Tangan)
Puan Sri Datin Pon binti Abdullah

(Tanda Tangan)
Azmin binti Tan Sri Abdul Aziz bin Zakaria

[4] The question before the court is whether the D held the land as the legal and beneficial owner of the said properties being gift *inter vivos*/"hibah" or just as trustee for the deceased and subsequently, the deceased's estate.

[5] The case was fixed for trial on 1 October 2009 and 2 October 2009. Before the start of the trial, learned counsel for the D raised a preliminary objection on the issue of jurisdiction and submitted that this case has to be filed in the Syariah Court because the Civil Court has no jurisdiction to determine the issue.

[6] The learned counsel for D in supporting his objection cited the decision of the Federal Court in the case of *Latifah Mat Zin v. Rosmawati Sharibun & Anor* [2007] 5 CLJ 253. The issue in the case is similar to the issue in the case before this court ie, whether properties held in the name of a Muslim person is a gift *inter vivos*/"hibah" or a trust. The facts of the case cited are as follows:

> [3] A dispute arose over the moneys in joint accounts. The first is the joint current account of the deceased with the appellant (Latifah), the Bumiputra Commerce Bank (BCB) joint account. The second is the Standard Chartered Bank (SCB) joint account of the deceased with the appellant (Latifah). (This joint account was converted from the earlier joint account of the deceased with Puan Buruk after her death). As has been mentioned, these joint accounts were included among the assets of the estate of the deceased. However, the appellant claimed that the monies in the two joint accounts were hers, having been given to her by the deceased as a gift. The respondents claimed that they belonged to the estate of the deceased.
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> [4] The petition was converted to a writ. It was agreed between the parties that the principal issue to be tried was:
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> 1. Whether the monies in the joint accounts of Dato' Sharibun bin Wahab (the Deceased) and Latifah binti Mat Zin (the Caveator) in Standard Chartered Bank Berhad (SCB) and Bumiputra Commerce Bank Berhad;
>
> 2. (BCBB) are the property of the Caveator, such monies having been the subject of gifts *inter vivos* recognizable in Islamic law as "hibah" by the Deceased to the Caveator;
>
> 1.1. in the event that the answer to I (above) is in the affirmative, then such monies do not therefore fall within the estate of the deceased for distribution between the beneficiaries under Faraid.

1.2 In the event that the answer to I (above) is in the negative, then such monies therefore fall within the estate of the deceased for distribution between the beneficiaries under Faraid.

[5] The **learned High Court judge** ruled that Islamic law applied for the determination of the issue. Applying what he found to be the Islamic law of "hibah" and the facts before him he ruled that there had been no "hibah" or gift of the monies in the joint accounts to the appellant. (emphasis added)

[7] On appeal, at the Court of Appeal the judgment had the following to say:

[6] **In the Court of Appeal,** it was argued by the learned counsel for the appellant that the applicable law was the Federal law of banking and contract. This argument was rejected by the court. It held that the applicable law was the law of gifts, not the law of banking or contract. The question would then be whether the applicable law in this case is the civil law of gifts *inter vivos* of the Islamic law or gifts *inter vivos* or "hibah".

[7] To the argument that because the dispute arose in a petition for administration; it was therefore a probate and administration matter the court held:

> We cannot agree that a dispute about gift is a dispute about probate and administration, just because it arises in the context of the administration of an estate.

and, the court further held:

> It is, therefore, our finding that the subject-matter of the dispute in this case, which is that of gifts *inter vivos* or "hibah" between Muslims, is not a probate and administration matter and is within the jurisdiction of the Syariah Courts.

[8] Having come to that conclusion, the court then, 'applying the provisions of art. 121(1A) of the Federal Constitution held that "the civil High Court had no jurisdiction over the dispute and the orders made were null and void and have to be set aside."

A [9] The court then went on to consider the facts of the case and held that "hibah" had been proved in respect of the joint accounts and that therefore the monies in the joint accounts were the property of the appellant. On the same ground the court held that the money in the Higher Education Fund
B account was also the property of the appellant. However, in view of the court's decision on jurisdictional issue, the court dismissed the appeal and set aside the order of the High Court with no order as to costs. (emphasis added)

[8] Subsequently, leave was granted to the appellant to refer
C certain questions to the Federal Court. I will not list the questions as Abdul Hamid Mohamed, Federal Court Judge said in his judgment at p. 289 that "I do not think it is necessary for me to try and answer the questions as they are framed. It is sufficient and clearer that I answer the question that touches the crux of
D the case which disposes of the appeal in my own way …"

[9] At the same p. 289, the Federal Court Judge stated:

… where a question arises as to whether a specific property forms part of the assets of an estate of a deceased person who
E is a Muslim in a petition for a letter of administration in the civil High Court, the answer to which depends on whether there was a gift *inter vivos* or not, **that question shall be determined in accordance with the Islamic Law of gift *inter vivos* or "hibah".** The determination of that issue and the beneficiary or
F beneficiaries entitled to it and in what proportion, if relevant, is within the **jurisdiction of the syariah court** and the civil court shall give effect to it in the grant of a letter of administration, and subsequently, in distributing the estate. (emphasis added)

[10] As such it is apparent that the issue as to whether the D
G being a Muslim held the property or trust or was it a gift *inter vivos*/"hibah" lies within the domain of the Syariah Court applying the Islamic Law of gift *inter vivos* or "hibah".

[11] The learned counsel for the P in rebutting the D's
H contention stated amongst others that:

(1) The P is not petitioning for the Letters of Administration which was already granted on 14 May 1996;

(2) The said properties are already listed under the list of assets
I of the deceased's estate;

(3) All beneficiaries have agreed to the P being the Administrator of the deceased's estate;

(4) There is no need to determine the beneficiaries entitlement as the relevant Sijil Faraid had been granted;

(5) The D cannot now claim that the said properties were "hibah" by the deceased; and

(6) The P is alleging trust based on the Surat Persetujuan of 15 February 1992.

[12] The P even advanced the argument that "... it has been eight (8) years since this action was filed in this Honourable Court and all the beneficiaries are anxiously awaiting the decision of this court we implore that this Honourable Court proceeds to hear this matter before you today My Lady without further ado."

[13] I find that the P's argument appears to emphasize on the Letters of Administration, list of beneficiaries and so on. However, it does not matter if the Letters of Administration has been granted, the said properties are already listed or not etc. The issue is that the D denies trust and claim gift *inter vivos*/"hibah" and the P is asking for the said properties to be given or handed over to the deceased estate. On this issue it was held that:

(4a) ... it is very clear that the determination whether the monies herein had been given as hibah by deceased to the appellant is a matter that falls with the jurisdiction of the Syariah Court ....

[14] On the issue of delay, the judgment had the following to say:

[80] As a result, jurisdictional problems that had not been envisaged have arisen. Some require double proceedings, one in the civil court and another in the syariah court before a final decision may be made. This causes delay and incurs unnecessary expenses. Others are outside the jurisdiction of both courts. These are not matters that the courts can solve as the courts owe their jurisdiction to statutes. It is for the legislature to step in, to decide as a matter of policy what should be the solution and legislate accordingly.

A [81] At least, as far as the instant appeal is concerned, all the parties being Muslims, there is a way out even though it involves double proceedings, delay and more expenses.

[15] Therefore, there is without a doubt that the proper forum for this dispute would be the Syariah Court applying the Islamic law.

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[16] Under the circumstances, I would agree with the learned counsel for the D and accordingly struck out the case with liberty to file afresh and made no order as to cost.

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